

No. 9/9/86-Lab./10456.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Chief Administrator, Faridabad Complex, N.I.T., Faridabad :—

**BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD**

Reference No. 641 of 1983

between

**SHRI DAWARKA NATH, WORKMAN, 1-H/17, ARYA SAMAJ ROAD, N.I.T., FARIDABAD AND
THE MANAGEMENT OF M/S CHIEF ADMINISTRATOR, FARIDABAD. COMPLEX N.I.T.,
FARIDABAD.**

Present.—

Shri K.L. Sharma, for the workman.

Shri Nafe Singh, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute between Shri Dawarka Nath, Workman and the Management of M/s Chief Administrator, Faridabad Complex, N.I.T., Faridabad, to this Tribunal for adjudication :—

“Whether the termination of service of Shri Dawarka Nath was justified and in order ? If not, to what relief is he entitled ?”

2. After receipt of order of reference, notices were issued to both the parties. The parties appeared. The case of the petitioner is that he was appointed as Mali on 6th October, 1982 in Faridabad Complex Administration, Faridabad and worked as such till 19th May, 1983 when his services were illegally terminated. He was getting salary of Rs. 340 per month. He prayed that he be reinstated with all back wages.

3. The respondent contested the claim of the petitioner. It was submitted that Dawarka Nath was appointed as Mali with effect from 6th December, 1982 on daily wages at the rate of Rs. 11.30 paise per day. His name was removed from the muster rolls on 19th May, 1983. It was pleaded that the workman had no right to continue in service and that termination of his services was within competency of the management and was validly effected. This plea was taken in the amended written statement ; though the plea in the original written statement was that the petitioner was appointed with effect from 6th October, 1982.

4. On the pleadings of the parties, the following issues were framed by my predecessor Shri R.N. Batra :

(1) Whether the claimant was appointed on daily wages as pleaded ? OPM

(2) Whether the termination of service of Shri Dawarka Nath was justified and in order ? If not, to what relief is he entitled ? OPM

5. I have heard Shri K.L. Sharma, learned authorised representative for the workman and Shri Nafe Singh Parokar for the Management. My findings on the aforesaid issues are as under :—

6. *Issue No. 1 and 2.*—Both these issues are interconnected and would be discussed together. Amar Singh, J.E., MW-1 has deposed that Dawarka Nath was appointed as Mali on casual basis on 6th December, 1982 and was discharged from service on 19th May, 1983. He produced copies of muster rolls Ex. M-1 to M-6. He also stated that Shri Dawarka Nath had worked for 96 days during that period and proved chart Ex. M-1 prepared from the muster rolls. His stand is corroborated by Krishan Lal, Horticulture Inspector, MW-2.

7. On the contrary Shri Dawarka Nath WW-1 stated that he was appointed on 6th October, 1982 on permanent basis and that no appointment letter was issued to him. He alleged that his services were terminated on 19th May, 1983 without paying him any legal dues at that time. He admitted in cross-examination that his services were terminated as there was no job for his assignment. Shri Nepal Singh WW-2 stated that Dawarka Nath was appointed on temporary basis and was paid Rs. 11.30 per day. MW-3 Shri Murari Lal stated that Dawarka Nath was appointed on permanent basis. Nepal Singh and Murari Lal are both the employees of Faridabad Complex Administration who had worked with Dawarka Nath.

8. From the perusal of the evidence led by both the parties, it is clear that Dawarka Nath was appointed as daily wage worker. The muster rolls clearly shows that he was a casual mali. He was appointed on casual basis as testified by Amar Singh, J.E., MW-1. There is no reason to disbelieve him.

9. The case of the petitioner is that he was appointed on 6th October, 1982 whereas the respondent's stand is that he was appointed on 6th December, 1982. It is not necessary to determine the date of appointment of Dawarka Nath, because the case can be disposed of otherwise. Even as per admission of Dawarka Nath he had worked from 6th October, 1982 to 19th May, 1983. Assuming that he worked continuously during this period, his total number of working days comes to 225 days. He had worked for less than 240 days during the last 12 calendar months. It may also be mentioned here that the management's stand is that he had worked for only 96 days.

10. As the workman had not completed 240 actual working days in the last 12 calendar months he could not claim the benefit of provisions of section 25-F of the Industrial Disputes Act, 1947. The Management could terminate his service without assigning any reason or paying any compensation. The action of the Management in terminating the services of a casual Mali is in accordance with law and no fault can be found with it. The issues are answered against the workman.

11. In view of the above discussion, I hold that termination of service of Dawarka Nath Mali is quite valid and he is not entitled to any relief whatsoever. No order as to costs. The reference is answered accordingly.

S. B. AHUJA,

Dated the 25th October, 1986.

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad

Endst. No. 677, dated 31st October, 1986

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

The 29th January, 1987

No. 9/1/87-6Lab./190.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of the Chief Executive Officer, District Rural Development Agency, Kurukshetra :—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Ref. No. 46 of 1985

between

SHRI TIRATH RAM S/O SHRI KESAV RAM, VILLAGE & POST OFFICE BARUT, TEH. KAITHAL,
DISTT. KURUKSHETRA AND THE MANAGEMENT OF THE CHIEF EXECUTIVE
OFFICER, DISTRICT RURAL DEVELOPMENT AGENCY KURUKSHETRA

Present :—

Shri Rajeshwar Nath for workman.
Shri Narinder Tiwana for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of his powers conferred, *vide* clause (c) of sub-section (i) of section 10 of Industrial Disputes Act, 1947, referred the dispute between Shri Tirath Ram workman and the Chief Executive Officer, District Rural Development Agency, Kurukshetra to this Court. The terms of the reference are as under :—

"Whether termination of services of Shri Tirath Ram is just and correct, if not, to what relief is he entitled?"

Workman through his statement of claim alleged that initially he was appointed as a Typist-cum-Clerk on 3rd November, 1981 on the consolidated wages and worked as such until 31st May, 1983. Thereafter, he was allowed regular pay scale of Rs. 400—600. His services were terminated w.e.f. 1st February, 1984 in violation of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management appeared, contested the dispute and contended that the workman was appointed in District Rural Development Agency, Office on 3rd November, 1981 on daily wages to work as a Typist up to 31st May, 1983 and thereafter he was appointed on *ad hoc* basis on 1st June, 1983 with the terms and conditions mentioned in the appointment letter which reads that services of the workman can be dispensed with without assigning any reason or without issuing any notice and similarly his services were terminated as no longer required. It was also contended that respondent-management, D.R.D.A. does not produce goods, service, hence Labour Laws are not applicable to it. Nor it comes in the definition of industry, so this reference is not maintainable against the respondent-management.

Workman filed replication through which he controverted the contentions of the respondent-management,

On the pleadings of the parties the following issues were framed :—

Issues :

1. Whether the termination of services of the workman is justified; if not, to what relief is he entitled? OPM
- 1-A. Whether respondent-management D.R.D.A. is not covered in definition of industry under the I.D. Act, 1947; if so, its effect? OPM
- 1-B. Whether the applicant is not a Workman in view of definition as defined in the Industrial Disputes Act, 1947; if so, its effect?

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under :—

Issue No. 1-A

Regarding this issue the evidence of the management is only to this effect that District Rural Development Agency is such an Agency which does not produce any goods nor service. In fact it helps the rural people regarding their employment and also makes available the loan facilities to them.

On the other hand the workman made statement that District Rural Development Agency has been indulging directly for providing employment avenues and it has also been running different centres in which technical guidance education is being rendered and more over invites loan applications and recommends those applications to the bank for providing loans and subsidy is also being given to the applicants. He further stated that in training centres the training at sewing machines, carpet making and garments making, etc. is being provided to the needies. So in view of the above evidence it is evident that the respondent indulges in providing employment avenues to the rural masses and it also runs training centres and makes trained the rural masses in certain jobs and after that trainings those people find themselves able to run certain business. There is a direct law on this point (1979 LABIC 599 Messrs Swaraj Ashram Kanpur versus Industrial Tribunal, Kanpur) in which it was observed even the Swaraj Ashram Kanpur is an industry.

In 1979 LAB IC 445 it was observed that motive of profit earning is irrelevant if any institution and its activities satisfies or fulfills human wants and wishes in respect of activities led to the distribution of goods and services that will be considered as an industry. Similarly in the case in hand the respondent-management runs certain institutions with the desire to provide employment avenue and certain training benefits to the rural masses, so D.R.D.A. falls in the definition of industry. So this issue is decided against the management, in favour of the workman.

Issue No. 1-B

It is admitted fact that workman was employed as a Typist-cum-Clerk on daily wages. Later on his services were converted into *ad hoc* basis and regular scale of 400—600 was given to him. Workman had been performing the duties of Clerk-cum-Typist. So admittedly he comes in the definition of a workman because he has not been assigned any duty of supervisory nature nor he drew pay more than Rs. 1,600 p.m., so this issue is also decided in favour of workman and against the management.

Issue No. 1

MW-1 Shri R.K. Bansal stated that initially Shri Tirath Ram was employed as Clerk-cum-Typist. Later on he was taken on *ad hoc* basis. Thereafter, his services were terminated. At the time of termination of his services he had completed more than 240 days because he remained in the service of respondent-management from 3rd November, 1981 to 1st February, 1984. It was also admitted by the management that before terminating services of workman no notice was issued to him, no pay, in lieu of, notice period, no retrenchment compensation was paid to him. It is admitted fact that after terminating service of Shri Tirath Ram another Clerk has been employed in his place. So there is a clear violation of provision of section 25(F) of Industrial Disputes Act, 1947.

MW-1 also stated that in the year 1983-84 the budget has expired regarding service of workman but when the new budget was sanctioned in that the previous post of Clerk was sanctioned by the Government against that post the workman was not given an opportunity to serve; the another person was employed which is in fact illegal.

It was the duty of respondent-management to have given an opportunity to Shri Tirath Ram, workman to join the services of the respondent-management again. But it failed to do so no reasonable explanation came on the file.

The terms and conditions mentioned in Ex-M-1, particularly clause (I) which reads that services of workman shall be terminated without prior notice and without assigning reason is in fact an unconstitutional clause and it is violative to section 25(F) of Industrial Disputes Act, so termination of Shri Tirath Ram is unjust and illegal, so this issue is decided in favour of workman and against the management.

Issue No. 2 Relief.

For the foregoing reasons on the basis of my issue wise findings it is ordered that Shri Tirath Ram, workman be reinstated with continuity in service and with full back wages. I pass award regarding the dispute in hand accordingly.

V.P. CHAUDHARY,

Dated the 25th November, 1986.

Presiding Officer,
Labour Court, Ambala.

Endst. No. 32221, dated the 28th November, 1986.

Forwarded (Four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Depts., Chandigarh, as required under section 15 of I.D. Act, 1947.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./228.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. (i) Secretary, H.S.E.B., Chandigarh, (ii) Executive Engineer, 'OP' H.S.E.B., Kurukshetra.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 258 of 1985

SHRI BABU RAM C/O SHRI HAR LAL, VILLAGE HABIAOTPUR, P.O. UDANA, TEHSIL INDRI,
DISTRICT KARNAL AND THE MANAGEMENT OF THE MESSRS (I) SECRETARY, H.S.E.B.,
CHANDIGARH (II) EXECUTIVE ENGINEER, 'OP' H.S.E.B., KURUKSHETRA.

Present :

- Shri Rajeshwar Nath, for the workman.
- Shri P.S. Sharma, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Babu Ram and Messrs H.S. E.B. etc. to this Court. The terms of the reference are as under :—

"Whether termination of services of Shri Babu Ram is just and correct? If not, to what relief is he entitled?"

Workman alleged that he had been in the service of respondent-management since May, 1979. His services were terminated on 4th January, 1985 in violation of section 25(F) of the Industrial Disputes Act. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that this reference is not maintainable. Workman was in the service of respondent on daily wages. He was habitual absentee when there was no work with the respondent management no work could be provided to him. When the workman was denied the work at that time no other person junior to Shri Babu Ram, workman was retained or kept in the service of respondent-management. It was also contended that workman never completed services of respondent more than 240 days in any year, so when he was denied the work there was no need regarding the compliance provisions of section 25(F) of Industrial Disputes Act, 1947.

On the pleadings of parties the following issues were framed—

Issues:

- 1. Whether termination order dated 4th January, 1985 is unjust and illegal, if not its effect ?
- 2. Relief.

Issue No. I

I have heard Authorised Representative of the parties and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under :—

Issue No. 1

In support of this issue workman examined himself as AW-1. He deposed that he joined the service of respondent-management on daily wages on 1st April, 1979. His services were terminated on 4th January, 1985 without any notice and without making payment of any retrenchment compensation. In cross-examination he stated that he was never informed by the respondent-management that he will be kept in job on the availability of the work with the department. He stated that Shri Amrik Singh, Karan Singh and Jaswant Singh who were junior to him have been retained in the job by the respondent-management.

Respondent examined MW-1 Shri Joginder Singh who stated that workman Babu Ram was appointed in May, 1979 on daily wages for three months. In June, 1979 Babu Ram was absent and remained absent up to three months. In September, 1979 he was re-employed. He again left service and returned after one year and four months, thereafter he was again re-employed in 1984. Due to paucity of work management has to discontinue the service of the workman. He also stated that workman never completed service of 240 days in any calendar year. It was also submitted that whenever there will be work with the respondent management workman shall be called and shall be provided job. He produced copy of service length of workman which is Exhibit M-1.

In view of the above evidence I am of the considered option that from statement, Exhibit M-1 it is clear that workman never served the respondent more than 240 days in any calendar year. He had been absenting himself in view of statement of MW-1. In 1985 he could not be provided any work because department had no work for him. Management has specifically stated that when ever there will be work with the respondent workman shall be called and shall be provided with the job. It was also submitted by MW-1 that not even a single person junior to workman Babu Ram in the service of respondent management. In these circumstances, I think that in fact there is no termination of services of the workman because he had been employed on daily wages on availability of work. Now when there is no work with the respondent-management workman cannot be retained in job. He is still on the rolls of respondent and the respondent has categorically stated that on the availability of work workman shall be called and he shall be provided the job. So this issue is decided accordingly.

Issue No. 2

For the foregoing reasons on the basis of my findings on issue No. 1, I am of the considered opinion that the work against which the workman was employed has been exhausted, so workman Babu Ram became automatically out of job. There is no termination of his services on the part of management. However, the management has promised that as soon as the work will be available with the management; workman shall be re-called and shall be provided job. In these circumstances I order that the respondent stands by its premise, so I pass award regarding the dispute between the parties accordingly.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Dated the 16th December, 1986.

Endorsement No. 3359, dated the 16th December, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

KULWANT SINGH,
Secretary to Government, Haryana,
Labour and Employment Depts.